

IN THE SUPREME COURT OF THE HAWAIIAN ISLANDS.

(Continued from page 7.)

The evidence shows that there were from fifty to over a hundred people assembled at the place where the offense was committed. Judge Perry lives at the corner of the street where the row occurred. The affidavit of counsel not only fails to show what diligence he used, but it fails to show that the defendants themselves did not know that the evidence of Judge Perry could not have been obtained, if sufficient inquiries had been made as to who were present at the place of the row. There is no evidence of any attempt to procure evidence from that locality.

There were other exceptions set forth in the bill of exceptions, but they were not argued nor were they set forth in defendants' brief, and we consider them as not relied upon and as abandoned. Exceptions overruled.

Deputy Attorney-General E. P. Dole for prosecution.
C. Creighton and A. G. Corcoran for defendants.

IN THE SUPREME COURT OF THE HAWAIIAN ISLANDS.

REPUBLIC OF HAWAII v. HOSHINA.

EXCEPTIONS FROM THE CIRCUIT COURT, FIRST CIRCUIT.

SUBMITTED SEPTEMBER 22, 1896. DECIDED OCTOBER 19, 1896.

JUDD, C.J., FREAR AND WHITING, JJ.

NOTE. There being evidence produced by defendant tending to prove that defendant was elsewhere than at the place where the offense is alleged to have been committed at the time alleged, the Court was justified of its own motion in charging the jury as to the law of alibi.

OPINION OF THE COURT, BY WHITING, J.

The defendant was convicted on a charge of unlawfully selling opium in the Circuit Court, First Circuit, and brings his bill of exceptions to this Court claiming error in the charge of the presiding judge to the jury.

The judge charged the jury on the law of alibi, the language of the charge however is not objected to, and the law as charged is admitted as sound law, but defendant claims that the defense of alibi was not set up by him and was not in issue in the case, and that he was injured and prejudiced by the Court construing the defendant's evidence as offered to prove an alibi, whereas defendant claims it was merely to discredit the witnesses for the prosecution and was offered for no other purpose.

The evidence certified up appears to have been presented generally without limitation nor for special purposes, and nowhere does it appear that defendant intended or offered to restrict its effect to discrediting testimony of witnesses for the prosecution, rather than for the purpose of proving an alibi.

The defendant merely excepted to the charge of the Court as to the law of alibi, but made no request for the Court to charge that the defense did not include an alibi or to limit the issue otherwise so as to exclude the question of alibi.

Counsel for parties may request the Court to charge the jury on questions involved, and the Court may of its own motion charge the jury upon any point of law involved in the trial. The Court in this instance charged the jury on its own motion that alibi was in issue and charged the law accordingly, and the question is was this point involved in the case.

An alibi is in criminal evidence, the defendant's showing under his plea of not guilty and without special averment, that when the criminal thing was done he was at some other place where he could not be the doer.

1 Bishop New Criminal Proc. Sec. 1061.

"A prisoner or accused person is said to set up an alibi when he alleges that at the time when the offense with which he is charged was committed, he was elsewhere, that is, in a different place from that in which it was committed. If proved, it is of course a complete answer to the charge."

1 Am. & Eng. Enc. of Law 454.

The place where the alleged delivery of the opium was made, was on the premises of the defendant. The evidence of the prosecution's witnesses showed that the delivery was made in the evening in the yard of the defendant by the defendant himself to one Masui. The opium consisted of 20 small packages in a big tin box and Hoshina handed it to Masui in the yard outside Hoshina's house; that one Iwata went and brought the box and handed it to Hoshina in the yard, Iwata coming from the street.

The defendant and his witnesses testified that Masui came to Hoshina's house, which was a small cottage, with but two or three small rooms, and that neither Iwata, Hoshina nor Masui at any time went out or left the room, nor in fact any of the witnesses went out while Masui was at the house, but all remained in the parlor—and when Masui took his departure, he left alone and none of those present went out with him, nor did Iwata nor Hoshina go at any time into the yard with Masui. That all the rest except Masui, remained at Hoshina's house for over an hour after Masui left, and none went out until 11 o'clock, p. m. when Iwata and his wife went home. There was also evidence of what took place in the parlor of Hoshina's tending to show that neither Iwata nor Hoshina could have gone into the yard with Masui that evening.

The effect of such testimony is certainly to show an alibi, for it tends to show that Hoshina was not in the yard with Masui at any time during the visit of Masui, and if so the transaction alleged could not have taken place, for Hoshina would then have been in a place elsewhere than that of the alleged place of offense, and in thus attempting to account for all his whereabouts and all his actions during the time of Masui's visit, but in a place different from that testified to by Masui, the Court was fully justified in using its discretion in giving in its charge the law of alibi.

Exceptions overruled.

Attorney-General W. O. Smith and Deputy Attorney-General E. P. Dole for prosecution.

A. G. M. Robertson for defendant.

SHIPPING INTELLIGENCE.

ARRIVALS.

Tuesday, Oct. 27.
Stmr. Kinau, Clarke, from Maui and Hawaii ports.
Wednesday, Oct. 29.
Stmr. J. A. Cummins, Searle, from Oahu ports.
C. A. S. S. Miowera, Hay, from the Colonies.

Thursday, Oct. 29.
N. Y. K. Kinshu-Mar, Thompson, from Yokohama.
Am bkne Archer, Calhoun, from San Francisco.
Am schr John D. Tallant, Hoffland, from Port Townsend.
Am bk Edward May, Johnson, from New York.
Stmr. Kawai, Bruhn, from Kauai ports and Niihau.
Stmr. James Makee, Peterson, from Kapa.
Stmr. Kaala, Thompson, from Oahu ports.

DEPARTURES.

Tuesday, Oct. 27.
Stmr. W. G. Hall, Simerson, for Maui and Hawaii ports.
Stmr. Claudine, Cameron, for Maui ports.
Stmr. Iwalani, Smythe, for Lahaina, Honokaa and Kukuhaele.
Stmr. Mikahala, Haglund, for Kauai ports.
Stmr. Waialeale, Gregory, for Kilauea, Kalihwai and Hanalei.
Wednesday, Oct. 28.
Stmr. Hawaii, Weir, for Hawaii ports.
Thursday, Oct. 29.
C. A. S. S. Miowera, Hay, for Vancouver and Victoria.
O. S. S. Australia, Houdlette, for San Francisco.
Stmr. James Makee, Peterson, for Kapa.
Stmr. Kaala, Thompson, for Oahu ports.

PASSENGERS.

Arrivals.

From Maui and Hawaii ports, per stmr. Kinau, Oct. 27—Volcano: Mrs. E. S. Cunha, Miss R. Cunha, Samuel Parker, Miss Eva Parker, J. M. Oat, Capt. J. Ross, Col. J. H. Fisher, C. R. Collins, H. M. Dow, Wm. Harris and wife, E. G. Hitchcock. Way ports: H. R. Rycroft, W. W. Brunner, A. W. Hobson, Mrs. Dr. Beattie, J. W. Bergstrom, Mrs. R. Ladd and son, G. K. Wilder, H. H. Renton, Miss M. Mortensen, Miss K. Franklin, F. Spencer, M. C. Santana, T. S. Kennedy, D. Farquhar, L. A. Andrews and 54 on deck.

From the Colonies, per C. A. S. S. Miowera, Oct. 28—Messrs. Barney and Barlow.

From Yokohama, per N. Y. K. Kinshu-Mar, Oct. 29—Geo. E. Boardman, Masuda Tomojiro, Mori Tomukichi and Mrs. Takagi Haru.

From San Francisco, per bkne Archer, Oct. 29—Miss Bergstrom, Miss Godfrey, Miss Collins, Mrs. Dana, Miss Foster, Geo. Kleugel and J. Beatty.

Departures.

For Maui and Hawaii ports, per stmr. W. G. Hall, Oct. 27—A. McWayne, J. F. Morgan and wife, Mrs. Meyers, Mrs. Geo. Lucas, Mrs. Rice, F. Carter, H. Mossman, Mrs. T. K. R. Amalu, Miriam Crowning, J. Beard, Miss Beard, Geo. Redick, Guffy, Dr. Capron and wife, Mrs. Keale and three children, Mrs. De Bretteville, J. E. Bush, J. D. Paris, Rev. H. Kilhara and Mr. Buchholz.

For Kauai ports, per stmr. Mikahala, Oct. 27—Miss M. E. Alexander, H. Morrison, Jas. Cowan, E. L. Kruss, H. Martensen, C. D. Pringle and 37 on deck.

For Maui ports, per stmr. Claudine, Oct. 27—Hon. H. P. Baldwin and 2 children, P. A. Dias, Mrs. Aina, Mrs. Coutoumanos and sister, Mrs. Reid and 2 children, C. B. Wells and daughter, C. R. Curtiss, A. Moore, R. R. Berg, A. Enos and wife and Akong.

For Hawaii, per stmr. Iwalani, Oct. 27—Geo. Renton, Dr. Day, J. F. Brown, J. Watt and 4 on deck.

For San Francisco, per O. S. S. Australia, Oct. 29—Cabin: E. C. Winston, G. H. Robinson, E. H. Rose, H. F. Jorgens, Miss N. J. Maloney, H. O. Staller, Miss Austin, Miss Lyman, C. D. Chase, G. Percy and wife, L. B. Fox, Dr. and Mrs. French, Mrs. O. C. Phillips, W. R. Eckart, Jr., C. F. Preston and 20 steerage passengers.

MARRIED.

FRENCH-KING—In this city, October 28, 1896, by the Rev. Dr. P. Birnie, Dr. T. French, M. D., of Boston, and Miss Amy Josephine King of Honolulu.

DIED.

HEWITT—In Honolulu, October 27, Edith Augusta, eldest daughter of A. M. and Pauline Hewitt, aged 10 years and 2 months.

Cable Address, "BAILLY," AGENTS, BAILLY OIL COMPANY.

Mining Properties.
BAILLY, PORTER & CO.
415 1/2 Montgomery St.,
San Francisco, Cal.

DEAL IN GOLD AND COPPER MINES.

Will take the supervision of mines if desired, and can insure a careful and economical management of the same. Mr. Porter being a mining and mill superintendent of long experience and thorough training; and our employees picked men.

W. H. BAILLY, Manager.
References, San Francisco: Selby Smelting & Lead Works, Hon. C. R. Bishop.
Honolulu: Hon. W. O. Smith, T. W. Hobron.

"Who'd you vote for yesterday, Ben?"
"De man what make de 'rangement wid me."
"What man?" "De man what change a one-dollar bill for me and give me two five an' a ten in change?"—Atlanta Constitution.

IN THE CIRCUIT COURT, FIRST CIRCUIT OF THE HAWAIIAN ISLANDS.

In Probate. In the matter of the Estate of Julia K. Campbell, late of Waihee, Maui, deceased, Intestate.

Petition having been filed by Wm. H. C. Campbell, widower of said intestate, praying that letters of administration upon said estate be issued to William O. Smith, notice is hereby given that MONDAY, the 23rd day of November, A. D. 1896, at 10 o'clock A. M., in the Judiciary Building, Honolulu, is appointed the time and place for hearing such petition, when and where all persons concerned may appear and show cause, if any they have, why said petition should not be granted.

Honolulu, Oct. 20th, A. D. 1896.
By the Court:
GEORGE LUCAS, Clerk.
1895-3tF

IN THE CIRCUIT COURT, FIRST CIRCUIT OF THE HAWAIIAN ISLANDS.

In the matter of the Estate of Antonio, Joao, Carlotta and Valentin Marcellino, minors.

On reading and filing the petition of Luiz da Gloria Marcellino, the Guardian of Antonio, Joao, Carlotta and Valentin Marcellino, minors, praying for an order of sale of certain real estate belonging to said wards, and setting forth certain legal reasons why such real estate should be sold.

It is hereby ordered that the next of kin of the said wards and all persons interested in the said estate, appear before this Court on Friday, the 6th day of November, A. D. 1896, at 10 o'clock A. M., at the Court Room of this Court, in Honolulu, then and there to show cause why an order should not be granted for the sale of such estate.

Dated Honolulu, H. I., Oct. 19th, 1896.
By the Court:
GEORGE LUCAS, Clerk.
1894-4t

COPARTNERSHIP NOTICE.

This is to certify that Robert Lishman and John Ouderkirk, residing at Honolulu, in the Island of Oahu, have entered into Copartnership for the purpose of carrying on the business of erecting buildings and contracting for the erection of brick and stone buildings, and also the selling and quarrying of stone on the Island of Oahu, under the firm name of LISHMAN & OUDERKIRK.

Dated Honolulu, Oct. 1st, 1896.
ROBERT LISHMAN,
JOHN OUDERKIRK.
1897-2tF

CORPORATION NOTICE.

Notice is hereby given, that at the annual meeting of the Humuula Sheep Station Co., Ltd., held at Honolulu on the 12th October, 1896, the following officers have been duly elected for the ensuing year:

Aug. Hansberg, President.
Aug. Gramberg, Vice-President.
J. F. Hackfeld, Secretary and Treasurer.
F. Klamp, Auditor.

J. F. HACKFELD, Secretary.
1892-3w

EXECUTORS' NOTICE.

The undersigned, executors under the will of Rev. Elias Bond, late of Kohala, in the Island of Hawaii, deceased, hereby give notice to all persons having claims against the estate of the said decedent, to present the same duly verified with proper vouchers, to Benj. D. Bond, Kohala, Hawaii, within six months from the date hereof, or they will be forever barred.

E. C. BOND,
B. D. BOND,
CAROLINE S. BOND,
Executors of the will of Rev. E. Bond.
Kohala, Oct. 14, 1896. 1894-6w

EXECUTRIX NOTICE.

The undersigned having been appointed Executrix of the will of Henry S. Tregloan, deceased, by order of the Hon. A. Perry, Circuit Judge of the First Circuit, on Oct. 5, 1896, hereby gives notice to all persons having claims against said estate to present the same with the vouchers duly authenticated to her at the old reliable tailoring establishment of said Henry S. Tregloan, on the west corner of Hotel and Fort streets, in Honolulu, within six months from the date hereof, or they will be forever barred. As it is necessary to settle said estate promptly, all persons indebted to the same will please make immediate settlement.

Dated Honolulu, Oct. 9th, 1896.
1891-4w 4427-6t

EXECUTOR'S NOTICE.

The undersigned, having been appointed executor of the will of the late Juliette M. Cooke, deceased, by order of the Hon. A. W. Carter, First Judge of the First Circuit Court, dated October 16, 1896, hereby gives notice to all persons having claims against said estate to present the same with the vouchers duly authenticated to him at his office in the Safe Deposit Company's Building, on Fort Street, Honolulu, within six months from the date hereof or they will be forever barred. Persons owing the said estate will please make immediate payment.

Dated Honolulu, Oct. 17, 1896.
CHARLES M. COOKE,
Executor of the will of Mrs. Juliette M. Cooke.
4453 1894-1w

NOTICE.

The undersigned hereby cautions the public against trusting any person in his name and for his account, as he has made a trust deed to Joseph O. Carter, as trustee, of all his property, for the uses and purposes set forth in the said deed, which is of record in the Registry Office in this city.

J. J. CUMMINS.
Honolulu, Oct. 10th, 1896.
1892-1m 4428-1w

MORTGAGEE'S NOTICE OF INTENTION TO FORECLOSE AND OF SALE.

Notice is hereby given that by virtue of a power of sale contained in a certain mortgage, dated, the 1st day of October, A. D. 1888, made by Elizabeth Kealoha and John Kanaupio, her husband, of Kailua, Island of Oahu, to J. M. Monsarrat, of Honolulu, in said Island of Oahu, Trustee, recorded in the office of the Registrar of Conveyances, in Liber 114, folios 44, 45 and 46, the said J. M. Monsarrat, Trustee, aforesaid, Mortgagee, intends to foreclose said mortgage for a breach of the conditions in said mortgage contained, to-wit, the non-payment of both the principal and interest when due.

Notice is also hereby given that all and singular the lands, tenements and hereditaments in said mortgage contained and described will be sold at public auction at the auction rooms of W. S. Luce on the corner of Queen and Fort streets in said Honolulu on Monday, the 23rd day of November, A. D. 1896, at 12 o'clock noon of said day.

The property in said mortgage is thus described, viz:

All that certain piece or parcel of land situated in said Kailua, containing an area of 1 acre and 57-100 chains and being Apana 3 of Royal Patent No. 2035, Land Commission Award Nos. 5882 and 8798 issued to Kekuku and that were conveyed to the said Elizabeth Kealoha by the said Kekuku by deed dated February 21, 1888, and recorded in the office of the Registrar of Conveyances in said Honolulu in Liber 106, folios 388-7.

J. M. MONSARRAT, Trustee, Mortgagee.

Terms cash. Deeds at expense of purchaser. For further particulars apply to the Mortgagee.
Dated Honolulu, Oct. 30, 1896.
1897-F4t

MORTGAGEE'S NOTICE OF INTENTION TO FORECLOSE AND OF SALE.

Notice is hereby given that by virtue of a power of sale contained in a certain mortgage dated the 4th day of June, A. D. 1894, made by Joseph Kanaana, of Honolulu, Island of Oahu, to James M. Monsarrat, of said Honolulu, recorded in the office of the Registrar of Conveyances in Liber 147, folios 339, 340 and 341, the said James M. Monsarrat, Mortgagee, intends to foreclose said mortgage for a breach of the conditions in said mortgage contained, to-wit, the non-payment of both the principal and interest when due.

Notice is also hereby given that all and singular the lands, tenements and hereditaments in said mortgage contained and described will be sold at public auction at the auction room of W. S. Luce, on the corner of Queen and Fort streets in said Honolulu, on Monday, the 23rd day of November, A. D. 1896, at 12 o'clock noon of said day.

The property in said mortgage is thus described, viz:
1. All that certain piece or parcel of land situated in the Ill of Nelu in Waihee, Island of Maui, containing an area of 48-100 of an acre, and being the same premises described in Royal Patent No. 5402, Land Commission Award No. 4405FF to Ku.

2. All those three certain pieces or parcels of land situated in the Ills of Paeuulu and Kapoho in said Waihee, containing in all an area of 1 1/2 acres, and being the same premises described in Royal Patent No. 5357, Land Commission Award No. 4296 to Mahoe 3.

The above mentioned and described premises being the same that were conveyed to the said Joseph Kanaana by J. M. Monsarrat, Trustee, by Mortgagee's deed dated May 21, 1894, and recorded in the office of the Registrar of Conveyances in said Honolulu, in Liber 146, on folios 488, 487 and 488.

JAMES M. MONSARRAT, Mortgagee.

Terms Cash. Deeds at expense of purchaser. For further particulars apply to the Mortgagee.
Dated Honolulu, October 30, 1896.
1897F-4t

MARSHAL'S FORECLOSURE SALE.

Pursuant to a decree and writ issued thereon in a certain suit in Equity for foreclosure of mortgage, pending in the First Circuit Court of the Republic of Hawaii, wherein the Trustees under the will of W. C. Lunallilo are plaintiffs, and Abigail Hopkins and Charles L. Hopkins are defendants, I will sell at public auction, at noon on Saturday, the 31st day of October, A. D. 1896, at the entrance of the Judiciary Building, in Honolulu, Island of Oahu; all the mortgaged premises described in plaintiff's complaint, being the following:

1. All that certain house lot with the buildings and structures thereon situated on the Walkiki Road beyond Marshfield, containing an area of forty thousand square feet, and being the same premises conveyed to Abigail Hopkins by deed of B. F. Dillingham, dated May, A. D. 1886, and recorded in Liber page

2. And that certain piece of land situated on the Walkiki Road beyond Marshfield containing an area of forty thousand square feet, and being the same premises conveyed to Abigail Hopkins by B. F. Dillingham, by deed dated the day of May, A. D. 1886, and recorded in the Hawaiian Registry of Deeds in Liber page; also those two certain pieces of land situated in North Kohala in the Island of Hawaii, and more particularly described in a certain deed made by E. K. Alwahi in favor of said Abigail Hopkins, dated the 4th day of February, A. D. 1884, and recorded in said Registry of Deeds in Liber 86, pages 272, 274.

The above mentioned property is further described as the land granted by R. P. 7710 containing 10 acres, 363 fathoms and by grant No. 2789 to Moehoua.

Deeds at expense of purchaser.
ARTHUR M. BROWN, Marshal.

Dated October 7, A. D. 1896.
1891-7t 4437-3t

Daily Advertiser, 75 cents a month, delivered by carriers.

SPECIAL PARTNERSHIP NOTICE

Notice is hereby given that the persons hereunder named have formed a SPECIAL PARTNERSHIP.

First: The name under which the partnership is to be conducted is

H. HACKFELD & CO.

Second: The general nature of the business intended to be transacted is the business of Importers, Sugar Factors and Commission Merchants.

The place where such business is to be transacted is in the Republic of Hawaii, with an office on the South Corner of Fort and Queen streets, in Honolulu, Oahu, in said Republic.

Third: The names and residences and the specification of general and special partners are as follows:

THE FOLLOWING ARE GENERAL PARTNERS:

Paul Isenberg, residing at Bremen, Germany.
J. F. Hackfeld, residing at said Honolulu.

THE FOLLOWING ARE SPECIAL PARTNERS:

J. C. Glade, residing at Wiesbaden, Germany.

J. W. Pfluger, residing at Bremen, Germany.

Prof. H. H. Pfluger, residing at Bonn, Germany.

J. C. Pfluger, residing at Bremen, Germany.

Fourth: The period at which such partnership was begun is September 1st, 1896, and it is to continue until September 1st, 1901.

PAUL ISENBERG.
J. F. HACKFELD.
J. C. GLADE.
J. W. PFLUGER.
PROF. H. H. PFLUGER.
J. C. PFLUGER.

Honolulu, Sept. 28th, 1896.
1798-5w

TIME TABLE Wilder's Steamship Company — 1896 —

S. S. Kinau,

CLARKE, Commander,

Will leave Honolulu at 10 o'clock a. m., touching at Lahaina, Maalea Bay and Makana the same day; Mahukona, Kawaihae and Laupahoehoe the following day, arriving in Hilo the same afternoon.

LEAVE HONOLULU.

*Friday Oct. 30
Tuesday Nov. 10
Friday Nov. 20
*Tuesday Dec. 1
Friday Dec. 11
Tuesday Dec. 22

Will call at Pohoiki, Puna, on trips marked *

Returning, will leave Hilo at 8 o'clock a. m., touching at Lapauhoehoe, Mahukona and Kawaihae the same day; Makana, Maalea Bay and Lahaina the following day, arriving at Honolulu the afternoons of Tuesdays and Fridays.

ARRIVE HONOLULU.

Friday Nov. 6
Tuesday Nov. 17
Saturday Nov. 23
Tuesday Dec. 8
Friday Dec. 18
Tuesday Dec. 23

Will call at Pohoiki, Puna, on the second trip of each month, arriving there on the morning of the day of sailing from Hilo to Honolulu.

The popular route to the volcano is via Hilo. A good carriage road the entire distance.
Round-trip Tickets, covering all expenses, \$50.

S. S. Claudine,

CAMERON, Commander.

Will leave Honolulu Tuesdays at 5 o'clock p. m., touching at Kahului, Hanalei, Hanalei and Kilauea, Maui. Returning, arrives at Honolulu Sunday mornings.

Will call at Nuu, Kaupo, once each month.

No freight will be received after 4 p. m. on day of sailing.

This company reserves the right to make changes in the time of departure and arrival of its steamers WITHOUT NOTICE, and it will not be responsible for any consequences arising therefrom. Consignees must be at the landings to receive their freight. This company will not hold itself responsible for freight after it has been landed.

Live stock received only at owner's risk.

This company will not be responsible for money or valuables of passengers unless placed in the care of purser.

Passengers are requested to purchase tickets before embarking. Those failing to do so will be subject to an additional charge of twenty-five per cent.

C. L. WIGHT, President.

S. B. ROSE, Secretary.

Capt. J. A. King, Port Superintendent Honolulu, H. I., Jan. 1, 1896.

JAPANESE POSTAGE STAMPS.

Every one who sends me 100 good stamps of his land will receive 100 stamps, in 20 varieties, from Japan.

K. TODA: Bingo Mitsunoshio, Japan.
1795-3m